

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

David St. Ann,

Plaintiff,

Case No. 15-cv-11770

v.

Judith E. Levy

Todd McLean, *et al.*,

United States District Judge

Defendants. Mag. Judge Anthony P. Patti

**OPINION AND ORDER DENYING PLAINTIFF'S OBJECTION
AND ADOPTING THE REPORT AND RECOMMENDATION TO
GRANT IN PART AND DENY IN PART DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT [27]**

On August 15, 2016, Magistrate Judge Anthony P. Patti filed a Report and Recommendation finding that only plaintiff's claims against "McLean, Potila, Morgan and/or Haynes which concern the *limited* subject of plaintiff remaining at Level IV (or maximum security/disciplinary unit) following the February 14, 2014 expiration of his detention and loss of privileges" should survive summary judgment. (Dkt. 27 at 36.) Plaintiff filed a timely objection to the Report and Recommendation. (Dkt. 28.) For the reasons set forth below, plaintiff's

objection is denied and the Report and Recommendation is adopted in full.

When resolving objections to a Report and Recommendation, the Court “must determine de novo any part of the magistrate judge’s disposition that has been properly objected to.” Fed. R. Civ. P. 72(b)(3). The Court “may accept, reject, or modify the recommended disposition; receive further evidence, or return the matter to the magistrate judge with instructions.” *Id.*; *see also* 28 U.S.C. § 636(b)(1).

I. Background

Plaintiff brought suit against various corrections officers in May 2015. (Dkt. 1.) In August 2015, plaintiff filed his first amended complaint—the operative pleading here. (Dkt. 6.) In October 2015, a fellow prisoner assaulted plaintiff, and plaintiff filed a motion to amend his complaint to include claims related to the assault in July 2015. (Dkt. 23.) Judge Patti has not yet ruled on plaintiff’s motion to amend the August 2015 complaint. Plaintiff’s operative complaint here does not include the claims that arose in October 2015.

In August 2016, Judge Patti issued a Report and Recommendation addressing defendants’ February 2016 motion for summary judgment.

(Dkt. 16.) The Report and Recommendation recommends granting defendants' motion for summary judgment as to all claims except "the plaintiff's claims against "McLean, Potila, Morgan and/or Haynes which concern the *limited* subject of plaintiff remaining at Level IV (or maximum security/ disciplinary unit) following the February 14, 2014 expiration of his detention and loss of privileges." (Dkt. 27 at 36.)

II. Analysis

a. Objection No. 1

Plaintiff sets forth one objection to the Report and Recommendation: essentially that Judge Patti "refus[ed] to allow him to amend his second complaint." (Dkt. 28 at 2.) Plaintiff's objection cites the portion of the Report and Recommendation that declined to address plaintiff's claims that are not contained in his operative complaint. (Dkt. 28 at 7; Dkt. 27 at 25.)

Specifically, Judge Patti noted that the "basis of Plaintiff's claims against non-party Buczek [are addressed] in his July 15, 2016 second motion to amend his complaint." (Dkt. 27 at 35.) And because plaintiff's sole objection to the Report and Recommendation concerns his July 2016 motion to amend his complaint, plaintiff has not properly

objected to any of the Magistrate Judge's findings in the Report and Recommendation. Thus, plaintiff's objection is denied because plaintiff has "fail[ed] to specify findings believed to be in error" in the Report and Recommendation currently before the Court. *Spencer v. Bouchard*, 449 F.3d 721, 725 (6th Cir. 2006).

Accordingly, plaintiff's objection is denied. Once Judge Patti rules on plaintiff's pending motion to amend his complaint, plaintiff can renew his objection if it is appropriate. (Dkt. 23.)

III. Conclusion

For the reasons set forth above, it is hereby ordered that:

The Report and Recommendation (Dkt. 27) is ADOPTED;

All of plaintiff's claims other than those against "McLean, Potila, Morgan and/or Haynes which concern the *limited* subject of plaintiff remaining at Level IV (or maximum security/ disciplinary unit) following the February 14, 2014 expiration of his detention and loss of privileges" are DISMISSED WITH PREJUDICE.

The Court certifies that an appeal of this decision would not be taken in good faith.

IT IS SO ORDERED.

Dated: October 4, 2016
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on October 4, 2016.

s/Felicia M. Moses
FELICIA M. MOSES
Case Manager